

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

United States of America	)	
	)	Cr. No. 6:01-48-1
	)	C.A. No. 6:05-453-HMH
	)	
vs.	)	<b>OPINION &amp; ORDER</b>
	)	
Milton Braten,	)	
	)	
Movant.	)	

This matter is before the court on the Government’s request for clarification concerning the court’s notice of a hearing in the instant action on May 8, 2006 (“May Hearing”). The court also issued notice of the May Hearing in criminal action number 6:06-196-HMH, indicating that Milton Braten (“Braten”) would be arraigned at the hearing.

For clarification, the May Hearing will not be an evidentiary hearing on the merits of Braten’s § 2255 motion. Under § 2255, the court must decide whether a hearing is required to determine the merits of the § 2255 motion. See Fed. R. Governing § 2255 Proceedings 8(a); United States v. Vasquez, 7 F.3d 81, 84 (5th Cir. 1993). If the court determines that an evidentiary hearing is necessary, the court must “appoint counsel for an indigent [movant].” Vasquez, 7 F.3d at 84; see Fed. R. Governing § 2255 Proceedings 8(c). An indigent movant is one who is “financially unable to obtain adequate representation” and who is entitled to representation under 18 U.S.C. § 3006A. See § 3006A(a) (West 2000 + Supp. 2005).

Although Braten filed a motion to proceed in forma pauperis in the instant action on February 14, 2005, his application is incomplete, as he did not answer question 5 of the application. (Mot. Proceed In Forma Pauperis 2.) Moreover, Braten’s motion was moot, as



there are no filing fees required to proceed on a § 2255 motion. Hence, in the instant action, the court has not yet ruled on Braten's alleged indigent status.

Accordingly, Braten is ordered to file a complete, updated financial affidavit to prove his indigent status before the May Hearing. At the May Hearing, the court will arraign Braten in criminal action number 6:06-196-HMH, determine whether Braten qualifies as an indigent movant for purposes of appointment of counsel, and set an evidentiary hearing and appoint counsel if necessary for the adjudication of Braten's § 2255 motion.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
April 20, 2006